

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

WATERLOGIC AMERICAS, LLC

Employer

and

Case 04-RC-234076

**UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPE
FITTING INDUSTRY OF THE UNITED STATES
AND CANADA, LOCAL 74, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

I am once again asked to decide whether service technicians employed by Waterlogic Americas, LLC (Employer) out of its New Castle, Delaware facility may collectively bargain with the Employer on their own or whether they must do so with other employee classifications. On November 1, 2017, in Case 04-RC-207630, I decided that a unit limited to service technicians constituted an appropriate unit. Now, a different labor organization, Plumbers Local 74 (Petitioner), is seeking to represent the service technicians, bringing the question of such a unit's appropriateness before me once more. This time, the Employer argues that three positions, the office coffee service (OCS),¹ the refurbishment technician, and the inventory control specialist, share a sufficient community of interest with the service technicians to require their inclusion. I now make my decision based on an entirely new record and under a different legal standard.² Nevertheless, I reach the same determination now as I did the last time: a unit confined to the petitioned-for service technicians is plainly appropriate for collective bargaining.

A hearing was held before a Hearing Officer on January 25 and 28, 2019. In making my determination, I have carefully reviewed the hearing transcript, exhibits, and the arguments of both parties. I emphasize that I base today's decision exclusively on the record in the present case as the parties here did not stipulate to any of my factual findings in Case 04-RC-207630, nor was the evidentiary record from that case submitted into evidence.

¹ Although the Employer, in its statement of position, referred to this classification as the "specialty sales route driver," Bryan McAlees, who has occupied this position for nearly two decades, stated that his title was "OCS" and not "specialty sales route driver." Accordingly, I will refer to the classification as the OCS.

² Soon after the prior decision issued, the Board in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), reinstated the traditional standard for assessing the appropriateness of a petitioned-for unit, overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), affd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

The Petitioner maintains that the service technicians are sufficiently distinct from the other three positions to constitute a separate bargaining unit. The Employer argues that the three positions share a sufficient community of interest with the service technicians to require their inclusion because these employees perform similar job tasks and all physically handle product.

Under the standard adopted by the Board in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), I find that service technicians constitute an appropriate unit since they work in a separate department with separate supervision, possess distinct skills and job function, and have different terms and conditions of employment, no regular interchange, and infrequent contact with the other three positions. Accordingly, I direct an election among the Employer's service technicians to determine whether they wish to be represented by the Petitioner in collective bargaining with the Employer.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer is the United States subsidiary of a multinational company based in the United Kingdom. The Employer's principal business is the leasing of water coolers to commercial businesses. A smaller portion of the Employer's business is the leasing of coffee makers and sparkling water dispensers to commercial businesses. In this decision, the term "dispensers" refers to any beverage dispenser leased by the Employer. The Employer has approximately 45 branch locations spread across the United States. Each branch location serves customers in a particular geographic area. The Employer provides its leasing services to customers in almost every part of the country.

The present case involves the Employer's location in New Castle, Delaware. In addition to constituting one of the roughly 45 branch locations mentioned above, the New Castle location serves as one of the major hubs for the Employer's overall operation. Thus, the Employer's New Castle building includes a warehouse that serves the entire eastern half of the United States. In other words, inventory (meaning dispensers, parts, and anything else the Employer needs for its operations) for the entire eastern half of the United States comes from suppliers to the New Castle warehouse and then emanates from the New Castle warehouse to the appropriate branch location or customer site. Furthermore, the Employer's New Castle facility includes a reconditioning center where the Employer receives dispensers from multiple branches that were previously leased. In addition, multiple senior Employer officials with nationwide responsibilities work out of the Employer's New Castle facility, including the Employer's corporate regional field service manager for training and development, Christopher McFarlane, who is responsible for the training of all of the Employer's service technicians in the United States, and the Employer's vice president of specialty products, Harry Ostwald, who oversees the Employer's coffee and sparkling water business across the nation.

In keeping with its dual status as branch location and major operational hub, the Employer's New Castle building is home to a mix of personnel, some of whom, like the petitioned-for service technicians, serve customers only within the New Castle branch's

jurisdiction, and others of whom serve customers in much larger territories. The Employer's seven service technicians travel to its customer's facilities to install, repair, tune up, or extract the dispensers, as circumstances warrant.

II. THE RELEVANT LEGAL AUTHORITY

The Act requires that a petitioner seek representation of employees in *an* appropriate unit, not the most appropriate unit possible. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969).

Recently, in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the Board rejected the overwhelming community of interest standard created in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *affd.* sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), and reinstated the traditional community-of-interest standard for assessing the appropriateness of a petitioned-for unit when the employer argues that the unit improperly excludes certain employees. Thus, once the Board determines that the employees in the unit sought by a petitioner share a community of interest, it next evaluates whether the interests of that group are "*sufficiently distinct* from those of other [excluded] employees to warrant the establishment of a separate unit." *PCC Structurals*, above, slip op. at 7, quoting *Wheeling Island Gaming*, 355 NLRB 637, 642 fn. 2 (2010) (emphasis in original).

Specifically, the inquiry is whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." *PCC Structurals*, above, slip op. at 11, quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016) (emphasis in original). In making this assessment, the Board examines whether the petitioned-for employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.*, slip op. at 11 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). All relevant factors must be weighed in determining community of interest.

With respect to employee interchange, the Board looks to see if there is significant, widespread interchange between employees sought by the employer and those within the petitioned-for unit, "suggest[ing] blurred departmental lines and a truly fluid work force with roughly comparable skills." See *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987) (where the Board found that a petitioned-for unit of 25 engineering department, locksmiths, and locksmiths helpers was an appropriate unit, rejecting the employer's request to add the 1000 employees who were employed at the hotel to the unit).

The Board has long found that bargaining units may be appropriate based on craft status, or where the requested employees are a clearly identifiable and homogenous group with a community of interest separate and apart from other employees. In making unit determinations, the Board similarly considers whether a community of interest exists, and examines such factors as mutuality of interests in wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Turner Industries Group, LLC*, 349 NLRB 428, 430 (2007).

III. ANALYSIS OF THE RELEVANT FACTORS

Job Functions and Work

The petitioned-for service technicians occupy a role in the Employer's business that is distinct from those of the OCS, the refurbishment technician, and the inventory control specialist. The service technician is responsible for installing dispensers at the customer's facilities, removing the dispensers from the various locations when the lease ends, repairing the dispensers at the various customer locations when they malfunction, and periodically inspecting and performing preventative maintenance on the dispensers at the customer locations. The service technicians spend nearly all of their time performing the aforementioned tasks on water coolers as opposed to other types of dispensers.

In fulfilling these functions, the service technicians must spend a large percentage of their work day driving to customers' locations, bringing with them the dispensers, parts, and tools needed to accomplish their tasks. The Employer's corporate regional field service manager, Christopher McFarlane, estimated that service technicians spend 40 percent of their work day driving to customer locations. Naturally, the remainder of the service technicians' work time is spent inside various customer locations, installing, extracting, repairing, or performing upkeep on dispensers. The service technicians spend nearly all of their work day away from the Employer's facility either at a customer's location or traveling to one. The New Castle-based service technicians perform work in the following geographic areas: the entire state of Delaware, much of eastern Pennsylvania, southern New Jersey, and a portion of Maryland and Virginia.

The three employees in the other classifications that the Employer seeks to include fulfill different roles in the Employer's operation. The OCS has two main functions: (1) replenishing the supply of coffee and related products (such as cream, sugar, cups, lids, and stirrers) for the Employer's customers; and (2) refurbishing used coffee makers. In the OCS' role in re-stocking coffee and related supplies for the customer, the OCS acts as salesperson, encouraging the customer to spend more money on coffee and associated products. Some of his replenishment duties include sorting and storing the coffee and coffee accessories from suppliers at the New Castle warehouse. The New Castle OCS works in a larger geographic area than the area served by the New Castle service technicians, as the OCS is responsible for much of Maryland. The second main function of the OCS is the refurbishment of used coffee makers in the reconditioning center at the Employer's New Castle facility. When the Employer repossesses a coffee maker it has leased, the OCS renders the coffee maker ready to be leased again. The OCS

refurbishes coffee makers for multiple Employer branches, not just for the New Castle branch. The OCS spends 75 percent of his time performing replenishment work while only 25 percent of his time performing refurbishment.

In contrast to the OCS who refurbishes coffee makers, the refurbishment technician repairs and refurbishes *water coolers* that the Employer has previously leased and repossessed to be leased again. The refurbishment technician performs this role for multiple branches, not just the New Castle branch, and he spends all of his time in the reconditioning center at the Employer's New Castle facility. The refurbishment technician spends about 90 percent of his time repairing water coolers and the remainder performing preventative maintenance.

The inventory control specialist helps with shipping and receiving for the Employer's inventory, including dispensers, beverage products, and parts for all of the Employer's operations in the eastern half of the United States. He spends all of his time in the Employer's warehouse at the New Castle facility. This warehouse serves all of the Employer's operations in the eastern half of the country.

In summary, the petitioned-for service technicians serve a distinct function for the Employer: installing, extracting, repairing, and maintaining dispensers that the Employer has leased to customers in a defined geographic area surrounding New Castle, Delaware. The other classifications do not perform any installations or removals. These other positions perform different functions for the Employer, both in terms of the purpose of their work and in terms of the territory for which they are responsible.

Separate Departments and Supervision

The Employer has organized the service technicians into a separate department with separate supervision from the three other classifications at issue, indicating that a bargaining unit limited to service technicians is appropriate. The service technicians report to Branch Service Supervisor Percy Allen, who oversees the service technician work within the New Castle branch's jurisdiction only. Allen, in turn, reports to Brandon Hyson, who is a corporate regional field service manager in Harrisburg, Pennsylvania overseeing service technician work at multiple branches: New Castle; Fairfax, Virginia; Baltimore, Maryland; and Harrisburg, Pennsylvania.

The Employer places the OCS, meanwhile, in a completely different administrative hierarchy. Specifically, the OCS falls under the umbrella of the Employer's specialty sales division (coffee division or Java Smart). The OCS reports to Specialty Sales Operations Manager Tara Harmon, who manages the Employer's coffee and sparkling water business for a large portion of the United States, and who in turn reports to Vice President for Specialty Products Harry Ostwald. The OCS takes direction directly from both Ostwald and Harmon.

Similarly, the Employer has grouped the refurbishment technicians across the country into a single administrative department dedicated exclusively to the preparation of previously leased dispensers for reuse. All refurbishment technicians throughout the United States,

including the New Castle-based refurbishment technician, report to Rich Desmond, the corporate regional field service manager for reconditioning, who works in St. Louis, Missouri.

The Employer has placed the inventory control specialist in still another department, the department dedicated to managing the Employer's inventory. Thus, the inventory control specialist who works in New Castle reports to Jack Lane, a senior supply chain manager and the person responsible for managing all of the Employer's inventory in the eastern half of the United States.

As the Board long ago observed: "We have always assumed it obvious that the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination." *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1951). That the Employer has placed the service technicians in a separate administrative hierarchy from the other classifications suggests that the service technicians have interests sufficiently distinct from these other employees to permit them to bargain collectively on their own. In addition, the fact that the service technicians are supervised separately from the other employees strongly favors the establishment of a separate unit.

Skills and Training

The service technicians' skillset is unique. Importantly, they are the only employees who install or extract dispensers. This is significant, as installation and extraction are complex processes. The Employer's water coolers do not rely on bottles but instead draw water from an existing source at the customer's location. This means that the service technicians must hook into pipes carrying water into the customer's site and then run copper or plastic tubing from that insertion point to the water cooler. If a water cooler must be removed, all of the aforementioned must be undone. The installation process is sufficiently complex that the Employer will not allow service technicians to attempt it until they have been on the job for a month or more. That the service technicians are the only employees skilled in installing and extracting water coolers points in favor of approving a separate unit for them.

It is true that the service technician and the refurbishment technician jobs require some of the same skills. Both must know how to repair and perform upkeep on water coolers. Consistent with this, refurbishment technicians and service technicians both receive a week-long training in Louisville, Kentucky upon being hired, and both participate in a nationwide conference call lasting about 30 minutes each Monday morning at which an Employer official located in Louisville educates them on the features of the Employer's various dispensers.

However, significantly, the refurbishment technician does his repairs and preventative maintenance in the relative comfort of Employer's New Castle facility, where he has access to ample resources and time. The service technicians, on the other hand, do their repairs and upkeep at the customer's site, with which they are likely unfamiliar and where they are, by definition, intruding into the customer's space. Furthermore, the service technicians are under

time pressure to complete the repair or maintenance quickly, both to end the intrusion and to get to the next customer in need.

Performing repairs and maintenance in these two very different contexts requires different skills. Consistent with this difference in skills, as part of their training, service technicians spend as many as two weeks riding along with an experienced service technician *before* going to the week-long training in Louisville, then spend an additional week riding along *after* going to that training. In contrast, there is nothing in the record suggesting the Employer requires refurbishment technicians to shadow service technicians as they travel to customer sites as part of the refurbishment technicians' training. Thus, the service technicians' skill in performing repairs and maintenance *at a customer's site* also sets them apart from the refurbishment technicians.

Although both service technicians and the OCS interact with customers, their interactions and the skills required are different. The service technicians' interaction with customers is limited to gaining information needed to perform the task at hand, be it an installation, a repair, or something else. The OCS, on the other hand, is expected to sell coffee and related products to the customer. Gathering information from a customer for a practical purpose and convincing a customer to buy things require two distinct skillsets. The OCS require more skills in sales.

Although both the service technicians and the OCS repair and perform upkeep on coffee makers, the service technicians must know how to do so in the context of being at the customer's site, while the OCS need only know how to do so in the relative ease of the Employer's facility. Reflecting the differences in skills required to be a service technician as opposed to an OCS, these two classifications undergo none of the same training. In summary, the service technicians and the OCS possess distinct skills and do not receive the same training.

There is no overlap in skills or training between the service technicians and the inventory control specialist.

Thus, although the service technicians have some overlap in skills and training with the refurbishment technician and some minor overlap in skills with the OCS, the service technicians have the unique skillset of being able to install and remove equipment and to perform repairs and upkeep at a customer's site, and the Employer provides them with correspondently unique training in the form of multiple weeks of ride-alongs.

Functional Integration and Contact

There is no meaningful functional integration between the service technicians and the other classifications. The other classifications do not aid the service technicians when the service technicians perform their principal functions of installing, extracting, fixing, or tuning up water coolers at customer sites.

The work of service technicians is connected to the work of the other classifications in only an attenuated way. The service technicians install used water coolers and coffee makers

which the refurbishment technician and the OCS have repaired. The OCS supplies and sells coffee and coffee accessories to customers leasing coffee makers that service technicians originally installed. Finally, the petitioned-for service technicians, like all of the Employer's employees in the entire eastern half of the country, draw their supplies from the inventory coming into the warehouse managed by the inventory control specialist. But these remote connections do not provide grounds for requiring that the service technicians and the other classifications be in a single unit. A closer degree of functional integration is required to compel excluded classifications into a petitioned-for unit. See, e.g., *United Operations*, 338 NLRB at 124-25.

There is minimal regular contact between the service technicians and the other classifications. The service technicians appear to have very little contact with the OCS. The interactions between these two classifications are confined to rare, sporadic exchanges—mostly just of pleasantries but occasionally work-related—when they happen to be at the Employer's New Castle facility at the same time.

The main interaction between the service technicians and the refurbishment technician is at the already-discussed conference call training meeting lasting about 30 minutes each Monday morning. On rare occasions, New Castle branch service supervisor Percy Allen keeps the service technicians and the refurbishment technician for an additional 15 minutes after the conference call ends to discuss New Castle branch-specific concerns. In addition, service technicians spend about 30 minutes about once or twice per month in the reconditioning center preparing a cooler for installation at the reconditioning center at the same time the refurbishment technician is present. The refurbishment technician acknowledged only a little interaction with service technicians. After bringing back a damaged water cooler to the facility, the service technicians will generally only note the problems with the cooler on an attached sheet and then leave the used cooler on a designated pallet in the warehouse area. The refurbishment technician will then just read the sheet, only rarely discussing a needed repair with a service technician.

As to interaction between the service technicians and the inventory control specialist, that is limited to when the service technicians need something from inventory and they either do not know where it is located or need assistance retrieving it and so must ask the inventory control specialist for help.

The minimal contact between the service technicians and the other classifications weighs against requiring them to bargain collectively together.

Interchange

The service technicians do not interchange with the OCS, the refurbishment technician, or the inventory control specialist on a temporary basis. The only evidence of a permanent interchange with service technicians was one brief instance about four or five years ago where a refurbishment technician became a service technician, but then the employee decided to transfer back as a refurbishment technician after six months. The lack of regular permanent and

temporary interchange further point toward a finding that the petitioned-for unit limited to service technicians is appropriate.

Terms and Conditions of Employment

There are major differences in the terms and conditions of employment of the service technicians and those of the other classifications. The service technicians work distinct hours from the other classifications. Service technician Anderson testified that he works from approximately 8:00 a.m. until approximately 4:30 p.m. or 5:00 p.m. The OCS, meanwhile, generally works from 6:30 a.m. until 3:00 p.m.; the refurbishment technician works from 7:30 a.m. until 4:00 p.m.; and the inventory control specialist generally works from 8:30 a.m. until 5:00 p.m.

In addition to their different schedules, the service technicians have a scheduling system that is unlike that of any of the other classifications. Thus, an Employer official in Farmington, Connecticut prepares an itinerary of tasks for each New Castle service technician to perform each day. A given day's schedule is uploaded to the service technician's Employer-issued cellular telephone either in the evening of the prior day or early in the morning of the day in question. The schedule tells the service technician the customers he will be serving that day and the order in which he will be serving them, as well as the basic nature of the task each customer requires. Service technicians can be assigned to any lessee location in the New Castle branch's jurisdiction on any given day. In addition, a given service technician may be assigned a range of tasks—installations, repairs, removals, or upkeep—on any given day. This system of assigning work is unique to service technicians. No other classification has anything comparable.

Also unique to service technicians is their use of and responsibility for Employer-owned vans. The service technicians travel to and from customer locations in vans owned by or leased to the Employer. Every petitioned-for service technician takes his van home with him at the end of his workday and keeps the van at his home overnight. Although the OCS uses a company-owned box truck when he re-stocks and sells coffee and related products at customer locations, the OCS does not keep the box truck at his home overnight. When the box truck is not out for deliveries, it is at the Employer's New Castle facility.

Finally, the service technicians are compensated differently from the other classifications. Specifically, each service technician is eligible to receive a bonus of up to \$500 every quarter based on certain performance metrics, including number of absences, volunteering for special assignments, timeliness, and number of tasks completed. The refurbishment technician and inventory control specialist receive only their hourly wage and fringe benefits as compensation. The OCS receives a two-percent sales commission on the coffee and related products that he sells in addition to his hourly pay rate. Besides service technicians, no other classification is subject to a comparable bonus system.³

³ Contrary to the Employer, the service technicians' bonus system and the OCS's sales commission are not so comparable that they would require grouping these two classifications together for collective bargaining. In addition to the fact that the bonus system is a range of

There is insufficient evidence in the record to make accurate comparisons between the hourly compensation of the service technicians and those of the other classifications. The OCS earns about \$19 per hour plus a two-percent sales commission. The refurbishment technician earns approximately \$15 per hour and the inventory control specialist earns \$16 per hour. Meanwhile, one service technician testified that he earns \$19.09 per hour along with a bonus, but he acknowledged that not all service technicians earn the same rate. On this evidence, I am unable to make an entirely accurate assessment of how the hourly wage rates of service technicians as a classification compare to those of the other classifications. This lack of evidence, however, is of limited significance, because the record *is* clear that there are major differences in how service technicians are compensated relative to the other classifications because of the bonus system. Regardless of hourly wage rates, these differences in compensation structure between the service technicians and other employees point to approving the service technicians' grouping into a separate bargaining unit.

The petitioned-for service technicians are subject to important terms and conditions of employment that they do not share with the other classifications. While it is true that the Employer has the same fringe benefits package and employee handbook for all classifications, the major differences in terms and conditions that do exist favor approving a unit limited to service technicians.

Summary Conclusion

As is evident from the above discussion, service technicians “share a community of interest sufficiently distinct from the interests of employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit.” *PCC Structurals*, above, 365 NLRB No. 160, slip op. at 5. The petitioned-for service technicians are in a separate department from the other employees; have skills and training that differ from the other employees in important ways; fulfill a completely separate function for the Employer's business; are not meaningfully functionally integrated with the other employees; have very little contact with the other employees; have no regular interchange with the other employees; have consequential terms and conditions of employment that are not shared with the other employees; and are separately supervised from the other employees. See *United Operations*, 338 NLRB at 123 (identifying these considerations as relevant to whether a petitioned-for unit is appropriate); see also *PCC Structurals*, above, slip op. at 5, 11 (adopting the considerations identified in *United Operations*, above at 123). Accordingly, I find that the petitioned-for unit of service technicians is an appropriate unit for collective bargaining. See, e.g., *Dahl Oil Co.*, 221 NLRB 1311, 1312-13 (1975) (finding a petitioned-for unit limited to employees “engaged in the installation and maintenance of oil burning equipment” at customers' sites appropriate even though it excluded: “drivers who deliver[ed] oil” for use in the equipment the aforementioned employees installed and maintained; “maintenance men who maintain[ed] and repair[ed] equipment at the Employer's facility”; and “mechanics who repair[ed] and maintain[ed] the

absolute monetary amounts and the commission is a percentage, the two forms of compensation are awarded differently, with one depending on a variety of measures indicating that an employee is performing well, and the other strictly on how much the OCS can sell.

Employer's vehicles"); see also *United Operations*, above, 338 NLRB at 125 (finding a unit limited to HVAC techs who serviced heating and air conditioning equipment at customers' sites appropriate even though it excluded employees who performed other types of services at those same sites). Having found "the unit sought by the petitioner" to be appropriate, my "inquiry ends" and I direct an election in that unit. *Wheeling Island*, above, 355 NLRB at 637 fn. 2.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians employed by the Employer at its facility at 77 McCullough Drive, New Castle, Delaware, **excluding** all other employees, office coffee service (OCS), refurbishment technicians, inventory control specialists, office clerical employees, professional employees, managerial employees, order processors, dispatchers, inventory administrative assistants, specialty assistants, route drivers, warehousemen, reconditioning technicians, guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 74, AFL-CIO.

A. Election Details

The election will be held on **Friday, February 15, 2019**, from **8:00 AM to 9:00 AM** in the conference room at the Employer's facility located at 77 McCullough Drive, New Castle, Delaware.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 9, 2019, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by February 13, 2019. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board,

1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: February 11, 2019

/s/ Dennis P. Walsh

DENNIS P. WALSH
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